HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WPMS No. 478 of 2001
(Old No. 34237 of 1995)

Shri Yudhvir Singh

Vs

State of U.P.
& others

Approved for reporting.

_____

~~Not approved for reporting~~

Date of decision 15.05.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 478 (MS) OF 2001

Shri Yudhivr Singh,
S/o Shri Kedar Singh,
R/o Village Khalari,
Tehsil-Purola, District-Uttarkashi. .....Petitioner.

Versus

1. State of U.P.
2. District Judge, Uttarkashi.
3. Prescribed Authority, Purola, District-Uttarkashi.

.....Respondents.

Dated: 15.05.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Tumul Nailwal and Anil Bisht, Advocate for the petitioners and Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the judgment and order dated 15.12.1993 (Annexure No. 7 to the writ petition) passed by the Prescribed Authority, Purola and judgment and order dated 09.10.1995 (Annexure No. 9 to the writ petition) passed by the District Judge, Uttarkashi.

Briefly stated, under Section 4(1) of U.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1971, respondent no.3 issued a notice to the petitioner based on the averments that the petitioner was an unauthorized occupant of plot no. 1423 measuring 0.946 hectares and plot no. 2327 measuring 0.264 hectares belonging to the State of U.P. and on which plots he has grown an orchard and had earned profit of Rs.

14,010/- and that he was liable to be evicted therefrom. The petitioner was called upon the show cause by 14.06.1993 as to why an order of petitioner's eviction from the property in dispute be not passed.

Pursuance to the aforesaid notice, the petitioner submitted his reply dated 16.07.1993 wherein he categorically averred and stated that he was not in illegal occupation of the property referred to in the notice nor has he grown an orchard thereon. He further stated that the boundaries of the land in dispute has not been mentioned nor the complete area of Khasra Plot Nos. 1423 and 2327 has been given. Petitioner has stated that no specific details of the property in dispute have been mentioned and the survey done by the Patwari has not been done keeping in view the bandobasti map dated 31.10.1968, therefore, the land in dispute namely Khasra No. 1234 & 2327 were not properly identified on the spot.

After filing the reply dated 16.07.1993, the petitioner again prayed for making fresh survey of the property in dispute in his presence.

The respondent no. 3 vide his judgment and order dated 15.12.1993 held that the petitioner is an unauthorized occupant of property in dispute and further ordered his eviction therefrom.

Being aggrieved, the petitioner preferred an appeal no. 3 of 1994 before the District Judge, Uttarkashi, which was dismissed in terms of the judgment and order dated 09.10.1995

Counsel for the petitioner has submitted that the land is not covered under the definition of Public Premises (Eviction of Unauthorized Occupants) Act and is exempted under the Act.

In ***Ranjeet Singh Vs. State of U.P. & others [2002(1) ELC 508 (HC),*** this Court has passed the following order to the following effect:-

"4. Learned counsel for the petitioners contended that the proceedings relating to agricultural land could not have been initiated under the Uttar Pradesh (Eviction of Unauthorized Occupants) Act. If the petitioners were unauthorized occupants on any agricultural land belonging to State, the proceedings under Section 122-B of U.P. Zamindari Abolition and land Reforms Act, 1950 could be drawn against them, as the land held by a tenure holder for the time being is not a public premises.

5. I find force in the contention of the learned counsel for the petitioners. The definition of "land" as defined under Section 3(4) of the U.P. Zamidari Abolition and Land Reforms Act, 1950 reads as under:-

"Land" means land held or occupied for purposes connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming."

6. In the present case, the disputed land is admittedly used for the petitioners for the purposes of agricultural as is evident from the statement on record that the petitioners are in occupation since 1380 Fasli. The U.P. Zamindari Abolition & Land Reforms Act itself provides procedure for eviction of unauthorized occupants under Section 122-B of the U.P. Zamindari Abolition & Land Reforms Act. The agricultural land is not covered under the U.P. Public Premises (Eviction of Unuthorised Occupants) Act, as is evident from the definition of U.P. Public Premises (Eviction of Unuthorised Occupants) Act, 1972, which reads as under:-

"2(b) 'Premises' means any land (including any forest land or trees standing thereon, or covered by water, or a road maintained by the State Government or land

appurtenant to such road) or any building or part of a building and includes,-

(i) the garden, grounds and out houses, if any, appertaining to such building or part of a building; and

(ii) any fittings or fixtures affixed to or any furniture supplied with such building or art of a building for the more beneficial enjoyment thereof.

but does not include land which for the time bering is held by a tenure holder under any law relating to land tenures."

"2(e) 'Public premises' means any premises belonging to or taken on lease or requisitioned by or on behalf of the State Government, and includes any premises belonging to or taken on lease by or on behalf of-

(v) any company as defined in Section 3 of Companies Act, 1956 in which not less than fifty-one per cent of the paid up share capital is held by the State Government; or

(vi) any local authority; or

(vii) any Corporation (not being a company as defined in Section 3 of the Companies Act, 1956 or a local authority) owned or controlled by the State Government; or

(viii) any society registered under the Societies Registration Act, 1860, the governing body whereof consists under the rules or regulation of the society, wholly or public officer, or nominees of the State Government, or both;

and also includes,--

(i) Nazul land or any other premises entrusted to the management of a local authority (including any building built with Government funds or land belonging to the State Government after the entrustment of the land to that local authority, not being land vested in or entrusted to the

management of a Gaon Sabha or any other local authority under any law relating to land tenures);

(ii) Any premises acquired under the land Acquisition Act, 1894 with the consent of the State Government for a company (as defined in that Act) and held by that company under an agreement executed under Section 41 of that Act providing for re-entry by the State Government in certain conditions."

7. Therefore, a conjoin reading of the definitions given under the Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 of the premises and public premises clearly exclude the application of the provisions of the U.P. Public Premises (Eviction of Unauthorised Occupants) Act in case a tenure holder holds the land for the time being. In the present case, the evidence is on record that the petitioners were in possession on the disputed land from 1380 Fasli. Therefore, at the time when proceedings were initiated for eviction, the petitioners were a tenure holder for the time being.

8. Hence the proceedings could only be drawn under U.P. Zamindari Abolition & Land Reforms Act and could not have been drawn under the Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act. Thus, the proceedings initiated under the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, which gave rise to these writ petitions, were without jurisdiction."

A writ of certiorari is issued quashing the orders dated 15.12.1993 and order dated 09.10.1995 passed by the respondents no. 3 and 2 respectively.

In view of the aforesaid, the notice issued under section 4(1) of the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972 is discharged.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

15.05.2006

Rathour